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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

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THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN AUGUST SCHROIFF,

Defendant and Appellant.

C080789

(Super. Ct. No. CRF14111)

Defendant John August Schroiff pleaded no contest to assaulting a police officer with a semiautomatic weapon, recklessly evading a police officer, and being a felon in possession of a firearm. The trial court sentenced defendant to serve an aggregate term of five years eight months in state prison and, among other fines and fees, ordered defendant to pay direct victim restitution totaling \$2,698.15 to Yolo County.

On appeal, defendant contends the trial court erred in ordering him to pay victim restitution to Yolo County. Defendant also contends the trial court violated his constitutional rights by not advising him at the time of his plea that he would be ordered

to pay victim restitution and violated the terms of his plea agreement by ordering him to pay victim restitution.

Finding none of defendant's claims to have merit, we affirm the judgment.

### BACKGROUND

On the evening of January 5, 2014, Yolo County Sheriff's Deputy "G. Hallenbeck" was on patrol on Interstate Highway 5 (I-5) when he saw defendant driving a Jaguar with expired registration. Consequently, Deputy Hallenbeck turned on the patrol car's emergency overhead lights to initiate a traffic stop. Defendant, however, did not pull over; he fled, passing numerous vehicles and reaching speeds near 135 miles per hour. Deputy Hallenbeck pursued defendant but lost sight of him.

Deputy Hallenbeck soon saw headlights off the freeway on a county road. He exited the freeway and saw defendant turning his car around at a "dead end." Deputy Hallenbeck pulled over to the side of the road and defendant, driving 35 miles per hour, crashed the Jaguar he was driving into the side of Deputy Hallenbeck's patrol car. Defendant turned around inside the car and pointed a gun at Deputy Hallenbeck. In response, Hallenbeck pulled his gun and fired two shots into the Jaguar, shattering the rear window. Defendant continued to drive away. Deputy Hallenbeck pursued defendant but lost sight of the Jaguar.

After searching the area, Deputy Hallenbeck found the Jaguar abandoned at a nearby truck stop. The car was overheated and had a flat tire. Other law enforcement officers found defendant standing on the side of I-5. They also found nine-millimeter rounds inside the Jaguar and an empty handgun in a nearby field.

The People later charged defendant with assault on a police officer with a firearm, assault with a deadly weapon, exhibiting a weapon against an officer with the intent to resist arrest, recklessly evading a police officer, being a felon in possession of a firearm, and being a felon in possession of ammunition. The People also alleged defendant

committed his crimes for the benefit of a criminal street gang, was personally armed with a firearm, and committed his crimes while released on bail.

Defendant pleaded no contest to assaulting a police officer with a semiautomatic weapon, recklessly evading a police officer, and being a felon in possession of a firearm. In exchange for his plea, the remaining charges and enhancements were dismissed on the People's motion.

On June 19, 2015, the trial court sentenced defendant to serve an aggregate term of six years four months in state prison.<sup>1</sup> Defendant objected to the proposed order for victim restitution to Yolo County for the damage done to the patrol car. Defendant considered it unfair that he be asked to pay for the damage to the patrol car when, according to defendant, Deputy Hallenbeck used the car to "assault" defendant. Defendant asked if he could switch out the reckless evading charge and plead to a different charge, one to which the restitution order would not attach. The court suggested restitution may attach to the other charges as well and set the matter for a hearing on restitution.

Defendant waived his appearance at the restitution hearing. Defense counsel nevertheless maintained defendant's claim that he should not have to pay victim restitution to Yolo County because Deputy Hallenbeck was the cause of the accident. After reviewing the video admitted into evidence by the People, the trial court ruled, "defendant turned into and struck the front passenger side [of Hallenbeck's] car." The court thus ordered defendant to pay restitution totaling \$2,698.15 to the Yolo County Sheriff's Department.

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<sup>1</sup> As anticipated by the parties, defendant was later sentenced in an unrelated matter in Lake County to serve an additional, consecutive eight-month term.

## DISCUSSION

### I

#### ***Yolo County Sheriff's Department Was a Direct Victim of Defendant's Crime and Was Entitled to Restitution***

Defendant first contends the trial court erred in ordering victim restitution paid to Yolo County because: (1) Yolo County was not a direct victim of his crime, and (2) the government cannot receive restitution “for losses incurred in apprehending criminals.” We disagree.

Where a victim suffers economic losses as a function of a defendant's actions that resulted in his or her conviction, a trial court must require the defendant to make restitution as part of the sentence. (*People v. Phu* (2009) 179 Cal.App.4th 280, 283; *People v. Lai* (2006) 138 Cal.App.4th 1227, 1249.) We give the right to victim restitution a broad and liberal construction. (*Phu*, at p. 283.) We review the court's restitution order for an abuse of discretion. (*Id.* at pp. 283-284.) An order based on an error of law would be an abuse of discretion. (*People v. Jennings* (2005) 128 Cal.App.4th 42, 49.)

Penal Code section 1202.4, subdivision (k)(2), defines victim to include any “government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of a crime.” As our Supreme Court observed, however, “ ‘public agencies are not directly “victimized” for purposes of restitution under Penal Code section 1202.4 merely because they spend money to investigate crimes or apprehend criminals.’ [Citation.]” (*People v. Martinez* (2005) 36 Cal.4th 384, 393, fn. 1.)

Defendant was convicted of recklessly evading a police officer, in violation of Vehicle Code section 2800.2, subdivision (a). Vehicle Code section 2800.2 prohibits the flight from or attempts to elude a pursuing law enforcement officer when “the pursued vehicle is driven in a willful or wanton disregard for the safety of persons or property.”

The evidence in the trial court established defendant intentionally hit Deputy Hallenbeck's patrol car so he could continue to evade pursuit and apprehension. Defendant's action resulted in damage to the patrol car.

Contrary to defendant's assertion, this is not a cost incurred during the regular performance of a deputy's duties. While Yolo County could not be compensated for the cost of gasoline or the personnel costs of the pursuit, defendant's decision to hit the county's patrol car is another matter. (See *People v. Rugamas* (2001) 93 Cal.App.4th 518, 521-523 [medical costs of treating defendant not ordinary law enforcement cost]; *In re Johnny M.* (2002) 100 Cal.App.4th 1128, 1134 [labor costs outside of regular duties].) Striking Deputy Hallenbeck's car was the immediate object of defendant's criminal conduct in willfully evading law enforcement officers. Yolo County, as the owner of the car, was the direct victim of defendant's criminal conduct and was therefore entitled to restitution for the damage to the car.

## II

### ***The Trial Court's Failure to Advise Defendant Did Not Prejudice Defendant***

Defendant next contends the trial court's failure to advise him at the time of his plea that he would owe direct victim restitution violated his constitutional rights. He further argues he was prejudiced by the error. We are not persuaded.

A trial court's obligation to advise the defendant of the direct consequences of a no contest plea is not constitutionally compelled. It arises from a judicially created rule of criminal procedure. (*People v. Walker* (1991) 54 Cal.3d 1013, 1022, overruled on other grounds in *People v. Villalobos* (2012) 54 Cal.4th 177, 183.) It follows from this notion, any error in accepting a plea without such admonitions of potential consequences may cause the plea to be set aside only if it is reasonably probable defendant "would not have entered the plea if he [or she] had been [properly advised]." (*Walker*, at pp. 1022-1023; *In re Moser* (1993) 6 Cal.4th 342, 352.)

Defendant urges us to believe he would not have entered into the plea agreement had he known he would be required to pay restitution to Yolo County for the damaged patrol car. Defendant argues that not only was he unable to afford the amount of restitution, but he was opposed to the order on principle.

It is evident from the record defendant was unhappy with the restitution order because, from his perspective, Deputy Hallenbeck used the patrol car to assault him. That said, defendant did not move to withdraw from the plea agreement; indeed, he did not even appear at the restitution hearing. As a result, “the prosecution never . . . had an opportunity to contest the assertion made by [defendant] on appeal, and the trial court had no occasion to pass upon the veracity of [defendant’s] present claim” he would not have entered a plea had he been advised of the required obligation to pay victim restitution. (*People v. McClellan* (1993) 6 Cal.4th 367, 378.)

Defendant has failed to carry his burden on appeal to show he was prejudiced by the trial court’s failure to advise him of the required obligation to pay victim restitution.

### III

#### ***The Trial Court Did Not Violate the Terms of Defendant’s Plea Bargain***

Defendant also claims the trial court violated the terms of his plea agreement by ordering him to pay victim restitution. Again, we are not persuaded.

Defendant was told his sentence could include a restitution fine up to \$10,000. The sentence ultimately imposed included \$1,110 in fines and \$2,698.15 in direct victim restitution. The total financial burden imposed by the sentence is therefore substantially less than the maximum to which defendant agreed he may be subjected. Instead of \$10,000 in restitution fines, defendant was ordered to pay a total of \$3,808.15. “[A] defendant has no basis for complaint when the total monetary liability (the combined amount of fines and restitution) does not exceed the maximum of which the defendant was advised.” (*People v. Nystrom* (1992) 7 Cal.App.4th 1177, 1181; see *People v. Sorenson* (2005) 125 Cal.App.4th 612, 621.)

## DISPOSITION

The judgment is affirmed.

HOCH, J.

We concur:

/s/  
HULL, Acting P. J.

ROBIE, J.